

Accompanying the eighth recommendation of the Department of Food and Agriculture (House, No. 100). The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Nine.

AN ACT PARTIALLY RESTRICTING THE POWER OF EMINENT DOMAIN WITH RESPECT TO CERTAIN LANDS USED FOR AGRICULTURE OR FARMING.*

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 5B of chapter 79 of the General Laws, as
2 appearing in chapter 143 of the acts of 1972, is hereby amended by
3 striking out the third sentence therein and inserting in place thereof
4 the following two sentences: — If there is no feasible and prudent
5 alternative to the use of such land, the board, in order to minimize
6 harm to property used for agriculture and farming, may purchase,
7 or otherwise acquire land of at least equal class and capability to
8 replace that which was required for use by the board. The board
9 shall convey such replacement land or transfer the custody, care or
10 control of such replacement land to the owner of the land taken by
11 eminent domain, and such conveyance or transfer may be partially
12 or entirely in lieu of damages for the land so acquired; provided,
13 however, such conveyance may be made only with the consent of
14 such owner.

1 SECTION 2. Chapter 81 of the General Laws, as most recently
2 amended by chapter 1155 of the acts of 1973, is hereby amended by
3 inserting after section 7M the following section: —

4 *Section 7N.* Whenever a federal-aid highway program or pro-
5 ject requires the use of any land which is part of property used for
6 agriculture or farming as defined in sections one and two of
7 chapter sixty-one A, and there is no feasible and prudent alter-
8 native to the use of such land, the department, in order to minimize

9 harm to such property used for agriculture and farming, may
10 purchase or otherwise acquire land to replace that which was
11 required for use in the highway program. The department shall
12 convey such replacement land or transfer the custody, care and
13 control of such replacement land to the owner of property used for
14 agriculture and farming, required for highway use, and such con-
15 veyance or transfer may be partially or entirely in lieu of damages
16 for the land acquired from such owners; provided, however, that
17 such conveyance may be made only with the consent of such
18 owner. The words "replacement land" as used in this section in
19 reference to property used for agriculture and farming shall mean
20 land of at least equal class and capability.